

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1533 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
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GHANSHYAM DATTARAM SAVANT

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner
MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 25/04/2000

ORAL JUDGEMENT

1. District Magistrate, Valsad, passed an order on July 27, 1999, in exercise of powers under Section 3(2) of the Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining-Ghanshyam Dattaram Savant of Kurla (West), Mumbai, under the provisions of the PASA Act, after branding him as a 'dangerous person'.

2. The detaining authority took into consideration two offences registered against the detenu. One is Vapi Town Police Station C.R. No.196 of 1997 and the other Vapi Town Police Station C.R. No.99 of 1999 and came to conclusion that the petitioner is a dangerous person, his activities are detrimental to public order and, therefore, he is required to be immediately prevented from pursuing his illegal and anti-social activities. The detaining authority also considered the possibility of resorting to less drastic remedies, but, ultimately, came to conclusion that detention under the PASA Act is the only efficacious remedy that can be resorted to for achieving the goal of immediate prevention of the petitioner from pursuing his activities.

3. The detenu/petitioner has challenged the order of detention on various counts. Ms. Patel, learned advocate appearing for the petitioner, submitted that the detaining authority has relied on two registered offences against the detenu to arrive at a conclusion that the petitioner is a dangerous person and that his activities are detrimental to public order. She submitted that the first offence, namely, C.R. No.196 of 1997 is a stale incident of 1997 and it could not have been considered by the detaining authority. She submitted further that copies of the bail application and the bail order are not supplied to the detenu along with the grounds of detention and, therefore, right of the detenu of making a representation is infringed. She submitted that C.R. No.196 of 1997 could not have been considered by the detaining authority. That would leave behind only one case against the detenu and, therefore, the detenu could not have been branded as a dangerous person, as there is no material to show his habitual involvement in such activities. Ms. Patel submitted that the detenu was in judicial custody when the order was passed and the detaining authority has not recorded any compelling reasons/circumstances for detaining the detenu while in judicial custody.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. He submitted that the petitioner is involved in serious crimes and, after considering all the materials, the detaining authority has recorded a subjective satisfaction and the Court may not entertain this petition by considering sufficiency or insufficiency of material before the authority for arriving at a subjective satisfaction. He submitted that the petition may be dismissed.

5. Having regard to rival side contentions, it may

be noted, at the outset, that the detaining authority has placed reliance only on two registered offences against the detenu. There is no other material to indicate activities of the detenu being either that of a dangerous person or being detrimental to public order. With this background, if the cases registered against the detenu are seen, the first case is C.R. No.196 of 1997, which relates to October 28, 1997. The order is passed in July 1999, i.e. nearly after two years. The incident, therefore, can reasonably be considered as a stale incident and the order, therefore, cannot be considered to have any causal connection with that incident. Additionally, it appears that bail application and bail order in respect of that case are not supplied to the detenu and, therefore, the right of the detenu of making a representation can be said to have been infringed. This offence, therefore, cannot be permitted to form a legitimate basis for an order of detention or for recording a satisfaction regarding the petitioner being dangerous person or his activities being detrimental to public order.

6. If the definition of "dangerous person" as given in Section 2(c) of the PASA Act is seen, it runs as under:-

"2(c) "dangerous person" means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offence punishable under Chapter V of the Arms Act, 1959."

A plain reading of this definition indicates that habitual commission or habitual attempts for commission of offence punishable under Section 307 of Indian Penal Code of Chapter V of Arms Act is required for branding a person as a 'dangerous person'. As discussed above, if C.R. No.196 of 1997 is not to be considered, that would leave behind only C.R. No.99 of 1999 and, therefore, the petitioner cannot be branded as a 'dangerous person' on basis of his involvement in one offence.

7. For the foregoing reasons, the order of detention cannot be sustained and the petition deserves to be allowed. The petition is, therefore, allowed. The impugned order of detention dated July 27, 1999, passed against the detenu is hereby quashed. The detenu-Ghasnshyam Dattaram Savant is ordered to be set at

liberty forthwith, if not required in any other matter.
Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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